

2SSB 5451 - S AMD 376

By Senator Keiser

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 82.04.050 and 2004 c 174 s 3 and 2004 c 153 s 407 are  
4 each reenacted and amended to read as follows:

5 (1) "Sale at retail" or "retail sale" means every sale of tangible  
6 personal property (including articles produced, fabricated, or  
7 imprinted) to all persons irrespective of the nature of their business  
8 and including, among others, without limiting the scope hereof, persons  
9 who install, repair, clean, alter, improve, construct, or decorate real  
10 or personal property of or for consumers other than a sale to a person  
11 who presents a resale certificate under RCW 82.04.470 and who:

12 (a) Purchases for the purpose of resale as tangible personal  
13 property in the regular course of business without intervening use by  
14 such person, but a purchase for the purpose of resale by a regional  
15 transit authority under RCW 81.112.300 is not a sale for resale; or

16 (b) Installs, repairs, cleans, alters, imprints, improves,  
17 constructs, or decorates real or personal property of or for consumers,  
18 if such tangible personal property becomes an ingredient or component  
19 of such real or personal property without intervening use by such  
20 person; or

21 (c) Purchases for the purpose of consuming the property purchased  
22 in producing for sale a new article of tangible personal property or  
23 substance, of which such property becomes an ingredient or component or  
24 is a chemical used in processing, when the primary purpose of such  
25 chemical is to create a chemical reaction directly through contact with  
26 an ingredient of a new article being produced for sale; or

27 (d) Purchases for the purpose of consuming the property purchased  
28 in producing ferrosilicon which is subsequently used in producing  
29 magnesium for sale, if the primary purpose of such property is to

1 create a chemical reaction directly through contact with an ingredient  
2 of ferrosilicon; or

3 (e) Purchases for the purpose of providing the property to  
4 consumers as part of competitive telephone service, as defined in RCW  
5 82.04.065. The term shall include every sale of tangible personal  
6 property which is used or consumed or to be used or consumed in the  
7 performance of any activity classified as a "sale at retail" or "retail  
8 sale" even though such property is resold or utilized as provided in  
9 (a), (b), (c), (d), or (e) of this subsection following such use. The  
10 term also means every sale of tangible personal property to persons  
11 engaged in any business which is taxable under RCW 82.04.280 (2) and  
12 (7), 82.04.290, and 82.04.2908.

13 (2) The term "sale at retail" or "retail sale" shall include the  
14 sale of or charge made for tangible personal property consumed and/or  
15 for labor and services rendered in respect to the following:

16 (a) The installing, repairing, cleaning, altering, imprinting, or  
17 improving of tangible personal property of or for consumers, including  
18 charges made for the mere use of facilities in respect thereto, but  
19 excluding charges made for the use of coin-operated laundry facilities  
20 when such facilities are situated in an apartment house, rooming house,  
21 or mobile home park for the exclusive use of the tenants thereof, and  
22 also excluding sales of laundry service to nonprofit health care  
23 facilities, and excluding services rendered in respect to live animals,  
24 birds and insects;

25 (b) The constructing, repairing, decorating, or improving of new or  
26 existing buildings or other structures under, upon, or above real  
27 property of or for consumers, including the installing or attaching of  
28 any article of tangible personal property therein or thereto, whether  
29 or not such personal property becomes a part of the realty by virtue of  
30 installation, and shall also include the sale of services or charges  
31 made for the clearing of land and the moving of earth excepting the  
32 mere leveling of land used in commercial farming or agriculture;

33 (c) The charge for labor and services rendered in respect to  
34 constructing, repairing, or improving any structure upon, above, or  
35 under any real property owned by an owner who conveys the property by  
36 title, possession, or any other means to the person performing such  
37 construction, repair, or improvement for the purpose of performing such

1 construction, repair, or improvement and the property is then  
2 reconveyed by title, possession, or any other means to the original  
3 owner;

4 (d) The sale of or charge made for labor and services rendered in  
5 respect to the cleaning, fumigating, razing or moving of existing  
6 buildings or structures, but shall not include the charge made for  
7 janitorial services; and for purposes of this section the term  
8 "janitorial services" shall mean those cleaning and caretaking services  
9 ordinarily performed by commercial janitor service businesses  
10 including, but not limited to, wall and window washing, floor cleaning  
11 and waxing, and the cleaning in place of rugs, drapes and upholstery.  
12 The term "janitorial services" does not include painting, papering,  
13 repairing, furnace or septic tank cleaning, snow removal or  
14 sandblasting;

15 (e) The sale of or charge made for labor and services rendered in  
16 respect to automobile towing and similar automotive transportation  
17 services, but not in respect to those required to report and pay taxes  
18 under chapter 82.16 RCW;

19 (f) The sale of and charge made for the furnishing of lodging and  
20 all other services by a hotel, rooming house, tourist court, motel,  
21 trailer camp, and the granting of any similar license to use real  
22 property, as distinguished from the renting or leasing of real  
23 property, and it shall be presumed that the occupancy of real property  
24 for a continuous period of one month or more constitutes a rental or  
25 lease of real property and not a mere license to use or enjoy the same.  
26 For the purposes of this subsection, it shall be presumed that the sale  
27 of and charge made for the furnishing of lodging for a continuous  
28 period of one month or more to a person is a rental or lease of real  
29 property and not a mere license to enjoy the same;

30 (g) The sale of or charge made for tangible personal property,  
31 labor and services to persons taxable under (a), (b), (c), (d), (e),  
32 and (f) of this subsection when such sales or charges are for property,  
33 labor and services which are used or consumed in whole or in part by  
34 such persons in the performance of any activity defined as a "sale at  
35 retail" or "retail sale" even though such property, labor and services  
36 may be resold after such use or consumption. Nothing contained in this  
37 subsection shall be construed to modify subsection (1) of this section

1 and nothing contained in subsection (1) of this section shall be  
2 construed to modify this subsection.

3 (3) The term "sale at retail" or "retail sale" shall include the  
4 sale of or charge made for personal, business, or professional services  
5 including amounts designated as interest, rents, fees, admission, and  
6 other service emoluments however designated, received by persons  
7 engaging in the following business activities:

8 (a) Amusement and recreation services including but not limited to  
9 golf, pool, billiards, skating, bowling, ski lifts and tows, day trips  
10 for sightseeing purposes, and others, when provided to consumers;

11 (b) Abstract, title insurance, and escrow services;

12 (c) Credit bureau services;

13 (d) Automobile parking and storage garage services;

14 (e) Landscape maintenance and horticultural services but excluding  
15 (i) horticultural services provided to farmers and (ii) pruning,  
16 trimming, repairing, removing, and clearing of trees and brush near  
17 electric transmission or distribution lines or equipment, if performed  
18 by or at the direction of an electric utility;

19 (f) Service charges associated with tickets to professional  
20 sporting events; (~~and~~)

21 (g) The following personal services: Physical fitness services,  
22 tanning salon services, tattoo parlor services, steam bath services,  
23 turkish bath services, escort services, and dating services; and

24 (h) Cosmetic medical services.

25 (4)(a) The term shall also include:

26 (i) The renting or leasing of tangible personal property to  
27 consumers; and

28 (ii) Providing tangible personal property along with an operator  
29 for a fixed or indeterminate period of time. A consideration of this  
30 is that the operator is necessary for the tangible personal property to  
31 perform as designed. For the purpose of this subsection (4)(a)(ii), an  
32 operator must do more than maintain, inspect, or set up the tangible  
33 personal property.

34 (b) The term shall not include the renting or leasing of tangible  
35 personal property where the lease or rental is for the purpose of  
36 sublease or subrent.

37 (5) The term shall also include the providing of telephone service,  
38 as defined in RCW 82.04.065, to consumers.

1 (6) The term shall also include the sale of prewritten computer  
2 software other than a sale to a person who presents a resale  
3 certificate under RCW 82.04.470, regardless of the method of delivery  
4 to the end user, but shall not include custom software or the  
5 customization of prewritten computer software.

6 (7) The term shall not include the sale of or charge made for labor  
7 and services rendered in respect to the building, repairing, or  
8 improving of any street, place, road, highway, easement, right of way,  
9 mass public transportation terminal or parking facility, bridge,  
10 tunnel, or trestle which is owned by a municipal corporation or  
11 political subdivision of the state or by the United States and which is  
12 used or to be used primarily for foot or vehicular traffic including  
13 mass transportation vehicles of any kind.

14 (8) The term shall also not include sales of chemical sprays or  
15 washes to persons for the purpose of postharvest treatment of fruit for  
16 the prevention of scald, fungus, mold, or decay, nor shall it include  
17 sales of feed, seed, seedlings, fertilizer, agents for enhanced  
18 pollination including insects such as bees, and spray materials to:

19 (a) Persons who participate in the federal conservation reserve  
20 program, the environmental quality incentives program, the wetlands  
21 reserve program, and the wildlife habitat incentives program, or their  
22 successors administered by the United States department of agriculture;

23 (b) farmers for the purpose of producing for sale any agricultural  
24 product; and (c) farmers acting under cooperative habitat development  
25 or access contracts with an organization exempt from federal income tax  
26 under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of  
27 fish and wildlife to produce or improve wildlife habitat on land that  
28 the farmer owns or leases.

29 (9) The term shall not include the sale of or charge made for labor  
30 and services rendered in respect to the constructing, repairing,  
31 decorating, or improving of new or existing buildings or other  
32 structures under, upon, or above real property of or for the United  
33 States, any instrumentality thereof, or a county or city housing  
34 authority created pursuant to chapter 35.82 RCW, including the  
35 installing, or attaching of any article of tangible personal property  
36 therein or thereto, whether or not such personal property becomes a  
37 part of the realty by virtue of installation. Nor shall the term  
38 include the sale of services or charges made for the clearing of land

1 and the moving of earth of or for the United States, any  
2 instrumentality thereof, or a county or city housing authority. Nor  
3 shall the term include the sale of services or charges made for  
4 cleaning up for the United States, or its instrumentalities,  
5 radioactive waste and other byproducts of weapons production and  
6 nuclear research and development.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.32 RCW  
8 to read as follows:

9 The sales and use taxes collected under RCW 82.08.020 and 82.12.020  
10 on cosmetic medical services, as defined in section 3 of this act,  
11 shall be deposited into the health services account in RCW 43.72.900  
12 and used solely for children's health care services.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.04 RCW  
14 to read as follows:

15 (1) "Cosmetic medical service" means any medical procedure  
16 performed on an individual by a person licensed or regulated in a  
17 health profession as described in RCW 18.120.020, and any services  
18 directly related to the performance of the medical procedure, that is  
19 directed at improving the individual's appearance and that is not  
20 medically necessary to promote the proper function of the body or  
21 prevent or treat physical illness or disease. "Cosmetic medical  
22 service" includes, but is not limited to, cosmetic surgery, hair  
23 transplants, cosmetic injections, cosmetic soft tissue fillers,  
24 dermabrasion and chemical peel, laser hair removal, laser skin  
25 resurfacing, laser treatment of leg veins, sclerotherapy, and only  
26 in-office bleaching procedures for dentists. Any medical procedure  
27 performed on abnormal structures caused by or related to congenital  
28 defects, developmental abnormalities, trauma, infection, tumors, or  
29 disease, including procedures to improve function or give a more normal  
30 appearance, is medically necessary. Services covered by the  
31 individual's medical or dental insurance or that are deductible by the  
32 individual as medical expenses for purposes of federal income tax are  
33 presumed to be medically necessary services.

34 (2) "Cosmetic surgery" means the surgical reshaping of normal  
35 structures on the body to improve the appearance of an individual.

1 (3) "Services directly related to the performance of the medical  
2 procedure" include occupancy at medical facilities and services  
3 provided by an anesthesiologist, surgeon, or other licensed or  
4 regulated health professional described in RCW 18.120.020. Services  
5 required for or directly related to cosmetic medical services do not  
6 include evaluation and referral by a primary care physician or  
7 consultation or treatment by a counselor, psychologist, or  
8 psychiatrist.

9 (4) An individual claiming that a medical procedure, otherwise  
10 meeting the definition of cosmetic medical service in this section, is  
11 not a cosmetic medical service must complete and provide to the seller  
12 an affidavit in a form and manner prescribed by the department  
13 documenting that the procedure is medically necessary to promote the  
14 proper function of the body or prevent or treat physical illness or  
15 disease. The seller shall retain a copy of the affidavit for the  
16 seller's files.

17 (5) A medical procedure, otherwise meeting the definition of  
18 cosmetic medical service in this section, is not subject to the sales  
19 and use taxes collected under RCW 82.08.020 and 82.12.020 if the  
20 individual provides certification by a mental health provider that the  
21 treatment is necessary to address a mental health condition.

22 **Sec. 4.** RCW 82.12.020 and 2003 c 361 s 302 and 2003 c 168 s 214  
23 are each reenacted and amended to read as follows:

24 (1) There is hereby levied and there shall be collected from every  
25 person in this state a tax or excise for the privilege of using within  
26 this state as a consumer: (a) Any article of tangible personal  
27 property purchased at retail, or acquired by lease, gift, repossession,  
28 or bailment, or extracted or produced or manufactured by the person so  
29 using the same, or otherwise furnished to a person engaged in any  
30 business taxable under RCW 82.04.280 (2) or (7); or (b) any prewritten  
31 computer software, regardless of the method of delivery, but excluding  
32 prewritten computer software that is either provided free of charge or  
33 is provided for temporary use in viewing information, or both.

34 (2) This tax shall apply to the use of every service defined as a  
35 retail sale in RCW 82.04.050 (2)(a) (~~(e)~~), (3)(a), or (3)(h) and the  
36 use of every article of tangible personal property, including property  
37 acquired at a casual or isolated sale, and including byproducts used by

1 the manufacturer thereof, except as hereinafter provided, irrespective  
2 of whether the article or similar articles are manufactured or are  
3 available for purchase within this state.

4 (3) The provisions of this chapter do not apply in respect to the  
5 use of any article of tangible personal property or service taxable  
6 under RCW 82.04.050 (2)(a) (~~(e)~~), (3)(a), or (3)(h) purchased at  
7 retail or acquired by lease, gift, or bailment if the sale to, or the  
8 use by, the present user or his bailor or donor has already been  
9 subjected to the tax under chapter 82.08 RCW or this chapter and the  
10 tax has been paid by the present user or by his bailor or donor.

11 (4) Except as provided in this section, payment by one purchaser or  
12 user of tangible personal property or service of the tax imposed by  
13 chapter 82.08 or 82.12 RCW shall not have the effect of exempting any  
14 other purchaser or user of the same property or service from the taxes  
15 imposed by such chapters. If the sale to, or the use by, the present  
16 user or his or her bailor or donor has already been subjected to the  
17 tax under chapter 82.08 RCW or this chapter and the tax has been paid  
18 by the present user or by his or her bailor or donor; or in respect to  
19 the use of property acquired by bailment and the tax has once been paid  
20 based on reasonable rental as determined by RCW 82.12.060 measured by  
21 the value of the article at time of first use multiplied by the tax  
22 rate imposed by chapter 82.08 RCW or this chapter as of the time of  
23 first use; or in respect to the use of any article of tangible personal  
24 property acquired by bailment, if the property was acquired by a  
25 previous bailee from the same bailor for use in the same general  
26 activity and the original bailment was prior to June 9, 1961, the tax  
27 imposed by this chapter does not apply.

28 (5) The tax shall be levied and collected in an amount equal to the  
29 value of the article used or value of the service used by the taxpayer  
30 multiplied by the rates in effect for the retail sales tax under RCW  
31 82.08.020, except in the case of a seller required to collect use tax  
32 from the purchaser, the tax shall be collected in an amount equal to  
33 the purchase price multiplied by the rate in effect for the retail  
34 sales tax under RCW 82.08.020.

35 **Sec. 5.** RCW 82.04.060 and 2002 c 367 s 1 are each amended to read  
36 as follows:

37 "Sale at wholesale" or "wholesale sale" means: (1) Any sale of

1 tangible personal property, any sale of services defined as a retail  
2 sale in RCW 82.04.050(2)(a), any sale of amusement or recreation  
3 services as defined in RCW 82.04.050(3)(a), any sale of canned  
4 software, any sale of cosmetic medical services defined as a retail  
5 sale in RCW 82.04.050(3)(h), or any sale of telephone service as  
6 defined in RCW 82.04.065, which is not a sale at retail; and (2) any  
7 charge made for labor and services rendered for persons who are not  
8 consumers, in respect to real or personal property, if such charge is  
9 expressly defined as a retail sale by RCW 82.04.050 when rendered to or  
10 for consumers: PROVIDED, That the term "real or personal property" as  
11 used in this subsection shall not include any natural products named in  
12 RCW 82.04.100.

13 **Sec. 6.** RCW 82.04.190 and 2004 c 174 s 4 and 2004 c 2 s 8 are each  
14 reenacted and amended to read as follows:

15 "Consumer" means the following:

16 (1) Any person who purchases, acquires, owns, holds, or uses any  
17 article of tangible personal property irrespective of the nature of the  
18 person's business and including, among others, without limiting the  
19 scope hereof, persons who install, repair, clean, alter, improve,  
20 construct, or decorate real or personal property of or for consumers  
21 other than for the purpose (a) of resale as tangible personal property  
22 in the regular course of business or (b) of incorporating such property  
23 as an ingredient or component of real or personal property when  
24 installing, repairing, cleaning, altering, imprinting, improving,  
25 constructing, or decorating such real or personal property of or for  
26 consumers or (c) of consuming such property in producing for sale a new  
27 article of tangible personal property or a new substance, of which such  
28 property becomes an ingredient or component or as a chemical used in  
29 processing, when the primary purpose of such chemical is to create a  
30 chemical reaction directly through contact with an ingredient of a new  
31 article being produced for sale or (d) purchases for the purpose of  
32 consuming the property purchased in producing ferrosilicon which is  
33 subsequently used in producing magnesium for sale, if the primary  
34 purpose of such property is to create a chemical reaction directly  
35 through contact with an ingredient of ferrosilicon;

36 (2)(a) Any person engaged in any business activity taxable under  
37 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or

1 uses any telephone service as defined in RCW 82.04.065, other than for  
2 resale in the regular course of business; (c) any person who purchases,  
3 acquires, or uses any service defined in RCW 82.04.050(2)(a), any  
4 service described in RCW 82.04.050(3)(h), or any amusement and  
5 recreation service defined in RCW 82.04.050(3)(a), other than for  
6 resale in the regular course of business; and (d) any person who is an  
7 end user of software;

8 (3) Any person engaged in the business of contracting for the  
9 building, repairing or improving of any street, place, road, highway,  
10 easement, right of way, mass public transportation terminal or parking  
11 facility, bridge, tunnel, or trestle which is owned by a municipal  
12 corporation or political subdivision of the state of Washington or by  
13 the United States and which is used or to be used primarily for foot or  
14 vehicular traffic including mass transportation vehicles of any kind as  
15 defined in RCW 82.04.280, in respect to tangible personal property when  
16 such person incorporates such property as an ingredient or component of  
17 such publicly owned street, place, road, highway, easement, right of  
18 way, mass public transportation terminal or parking facility, bridge,  
19 tunnel, or trestle by installing, placing or spreading the property in  
20 or upon the right of way of such street, place, road, highway,  
21 easement, bridge, tunnel, or trestle or in or upon the site of such  
22 mass public transportation terminal or parking facility;

23 (4) Any person who is an owner, lessee or has the right of  
24 possession to or an easement in real property which is being  
25 constructed, repaired, decorated, improved, or otherwise altered by a  
26 person engaged in business, excluding only (a) municipal corporations  
27 or political subdivisions of the state in respect to labor and services  
28 rendered to their real property which is used or held for public road  
29 purposes, and (b) the United States, instrumentalities thereof, and  
30 county and city housing authorities created pursuant to chapter 35.82  
31 RCW in respect to labor and services rendered to their real property.  
32 Nothing contained in this or any other subsection of this definition  
33 shall be construed to modify any other definition of "consumer";

34 (5) Any person who is an owner, lessee, or has the right of  
35 possession to personal property which is being constructed, repaired,  
36 improved, cleaned, imprinted, or otherwise altered by a person engaged  
37 in business;

1 (6) Any person engaged in the business of constructing, repairing,  
2 decorating, or improving new or existing buildings or other structures  
3 under, upon, or above real property of or for the United States, any  
4 instrumentality thereof, or a county or city housing authority created  
5 pursuant to chapter 35.82 RCW, including the installing or attaching of  
6 any article of tangible personal property therein or thereto, whether  
7 or not such personal property becomes a part of the realty by virtue of  
8 installation; also, any person engaged in the business of clearing land  
9 and moving earth of or for the United States, any instrumentality  
10 thereof, or a county or city housing authority created pursuant to  
11 chapter 35.82 RCW. Any such person shall be a consumer within the  
12 meaning of this subsection in respect to tangible personal property  
13 incorporated into, installed in, or attached to such building or other  
14 structure by such person, except that consumer does not include any  
15 person engaged in the business of constructing, repairing, decorating,  
16 or improving new or existing buildings or other structures under, upon,  
17 or above real property of or for the United States, or any  
18 instrumentality thereof, if the investment project would qualify for  
19 sales and use tax deferral under chapter 82.63 RCW if undertaken by a  
20 private entity;

21 (7) Any person who is a lessor of machinery and equipment, the  
22 rental of which is exempt from the tax imposed by RCW 82.08.020 under  
23 RCW 82.08.02565, with respect to the sale of or charge made for  
24 tangible personal property consumed in respect to repairing the  
25 machinery and equipment, if the tangible personal property has a useful  
26 life of less than one year. Nothing contained in this or any other  
27 subsection of this section shall be construed to modify any other  
28 definition of "consumer"; and

29 (8) Any person engaged in the business of cleaning up for the  
30 United States, or its instrumentalities, radioactive waste and other  
31 byproducts of weapons production and nuclear research and development.

32 **Sec. 7.** RCW 82.12.010 and 2003 c 168 s 102 and 2003 c 5 s 1 are  
33 each reenacted and amended to read as follows:

34 For the purposes of this chapter:

35 (1) "Purchase price" means the same as sales price as defined in  
36 RCW 82.08.010.

1 (2)(a) "Value of the article used" shall be the purchase price for  
2 the article of tangible personal property, the use of which is taxable  
3 under this chapter. The term also includes, in addition to the  
4 purchase price, the amount of any tariff or duty paid with respect to  
5 the importation of the article used. In case the article used is  
6 acquired by lease or by gift or is extracted, produced, or manufactured  
7 by the person using the same or is sold under conditions wherein the  
8 purchase price does not represent the true value thereof, the value of  
9 the article used shall be determined as nearly as possible according to  
10 the retail selling price at place of use of similar products of like  
11 quality and character under such rules as the department may prescribe.

12 (b) In case the articles used are acquired by bailment, the value  
13 of the use of the articles so used shall be in an amount representing  
14 a reasonable rental for the use of the articles so bailed, determined  
15 as nearly as possible according to the value of such use at the places  
16 of use of similar products of like quality and character under such  
17 rules as the department of revenue may prescribe. In case any such  
18 articles of tangible personal property are used in respect to the  
19 construction, repairing, decorating, or improving of, and which become  
20 or are to become an ingredient or component of, new or existing  
21 buildings or other structures under, upon, or above real property of or  
22 for the United States, any instrumentality thereof, or a county or city  
23 housing authority created pursuant to chapter 35.82 RCW, including the  
24 installing or attaching of any such articles therein or thereto,  
25 whether or not such personal property becomes a part of the realty by  
26 virtue of installation, then the value of the use of such articles so  
27 used shall be determined according to the retail selling price of such  
28 articles, or in the absence of such a selling price, as nearly as  
29 possible according to the retail selling price at place of use of  
30 similar products of like quality and character or, in the absence of  
31 either of these selling price measures, such value may be determined  
32 upon a cost basis, in any event under such rules as the department of  
33 revenue may prescribe.

34 (c) In the case of articles owned by a user engaged in business  
35 outside the state which are brought into the state for no more than one  
36 hundred eighty days in any period of three hundred sixty-five  
37 consecutive days and which are temporarily used for business purposes  
38 by the person in this state, the value of the article used shall be an

1 amount representing a reasonable rental for the use of the articles,  
2 unless the person has paid tax under this chapter or chapter 82.08 RCW  
3 upon the full value of the article used, as defined in (a) of this  
4 subsection.

5 (d) In the case of articles manufactured or produced by the user  
6 and used in the manufacture or production of products sold or to be  
7 sold to the department of defense of the United States, the value of  
8 the articles used shall be determined according to the value of the  
9 ingredients of such articles.

10 (e) In the case of an article manufactured or produced for purposes  
11 of serving as a prototype for the development of a new or improved  
12 product, the value of the article used shall be determined by: (i) The  
13 retail selling price of such new or improved product when first offered  
14 for sale; or (ii) the value of materials incorporated into the  
15 prototype in cases in which the new or improved product is not offered  
16 for sale.

17 (f) In the case of an article purchased with a direct pay permit  
18 under RCW 82.32.087, the value of the article used shall be determined  
19 by the purchase price of such article if, but for the use of the direct  
20 pay permit, the transaction would have been subject to sales tax;

21 (3) "Value of the service used" means the purchase price for the  
22 service, the use of which is taxable under this chapter. If the  
23 service is received by gift or under conditions wherein the purchase  
24 price does not represent the true value thereof, the value of the  
25 service used shall be determined as nearly as possible according to the  
26 retail selling price at place of use of similar services of like  
27 quality and character under rules the department may prescribe;

28 (4) "Use," "used," "using," or "put to use" shall have their  
29 ordinary meaning, and shall mean:

30 (a) With respect to tangible personal property, the first act  
31 within this state by which the taxpayer takes or assumes dominion or  
32 control over the article of tangible personal property (as a consumer),  
33 and include installation, storage, withdrawal from storage,  
34 distribution, or any other act preparatory to subsequent actual use or  
35 consumption within this state; (~~and~~)

36 (b) With respect to a service defined in RCW 82.04.050(2)(a), the  
37 first act within this state after the service has been performed by  
38 which the taxpayer takes or assumes dominion or control over the

1 article of tangible personal property upon which the service was  
2 performed (as a consumer), and include installation, storage,  
3 withdrawal from storage, distribution, or any other act preparatory to  
4 subsequent actual use or consumption of the article within this state;  
5 and

6 (c) With respect to a service described in RCW 82.04.050(3)(h), the  
7 first presence within this state by the taxpayer after the service has  
8 been performed upon that taxpayer;

9 (5) "Taxpayer" and "purchaser" include all persons included within  
10 the meaning of the word "buyer" and the word "consumer" as defined in  
11 chapters 82.04 and 82.08 RCW;

12 (6) "Retailer" means every seller as defined in RCW 82.08.010 and  
13 every person engaged in the business of selling tangible personal  
14 property at retail and every person required to collect from purchasers  
15 the tax imposed under this chapter;

16 (7) The meaning ascribed to words and phrases in chapters 82.04 and  
17 82.08 RCW, insofar as applicable, shall have full force and effect with  
18 respect to taxes imposed under the provisions of this chapter.  
19 "Consumer," in addition to the meaning ascribed to it in chapters 82.04  
20 and 82.08 RCW insofar as applicable, shall also mean any person who  
21 distributes or displays, or causes to be distributed or displayed, any  
22 article of tangible personal property, except newspapers, the primary  
23 purpose of which is to promote the sale of products or services. With  
24 respect to property distributed to persons within this state by a  
25 consumer as defined in this subsection (7), the use of the property  
26 shall be deemed to be by such consumer.

27 **Sec. 8.** RCW 82.12.035 and 2002 c 367 s 5 are each amended to read  
28 as follows:

29 A credit shall be allowed against the taxes imposed by this chapter  
30 upon the use of tangible personal property(~~(7)~~) or services taxable  
31 under RCW 82.04.050 (2)(a) (~~(e)~~), (3)(a), or (3)(h), in the state of  
32 Washington in the amount that the present user thereof or his or her  
33 bailor or donor has paid a retail sales or use tax with respect to such  
34 property or service to any other state of the United States, any  
35 political subdivision thereof, the District of Columbia, and any  
36 foreign country or political subdivision thereof, prior to the use of  
37 such property or service in Washington.

1       **Sec. 9.** RCW 82.12.0251 and 2003 c 5 s 18 are each amended to read  
2 as follows:

3       The provisions of this chapter shall not apply in respect to the  
4 use:

5       (1) Of any article of tangible personal property, and services that  
6 were rendered in respect to such property, brought into the state of  
7 Washington by a nonresident thereof for his or her use or enjoyment  
8 while temporarily within the state of Washington unless such property  
9 is used in conducting a nontransitory business activity within the  
10 state of Washington;

11       (2) By a nonresident of Washington of a motor vehicle or trailer  
12 which is registered or licensed under the laws of the state of his or  
13 her residence, and which is not required to be registered or licensed  
14 under the laws of Washington, including motor vehicles or trailers  
15 exempt pursuant to a declaration issued by the department of licensing  
16 under RCW 46.85.060, and services rendered outside the state of  
17 Washington in respect to such property;

18       (3) Of household goods, personal effects, and private motor  
19 vehicles, and services rendered in respect to such property, by a bona  
20 fide resident of Washington, or nonresident members of the armed forces  
21 who are stationed in Washington pursuant to military orders, if such  
22 articles and services were acquired and used by such person in another  
23 state while a bona fide resident thereof and such acquisition and use  
24 occurred more than ninety days prior to the time he or she entered  
25 Washington. For purposes of this subsection, private motor vehicles  
26 (~~does do~~) do not include motor homes;

27       (4) Of any service defined as a retail sale in RCW 82.04.050(3)(h)  
28 by a nonresident of Washington.

29       (~~(4)~~) For purposes of this section, "state" means a state of the  
30 United States, any political subdivision thereof, the District of  
31 Columbia, and any foreign country or political subdivision thereof, and  
32 "services" means services defined as retail sales in RCW  
33 82.04.050(2)(a).

34       NEW SECTION. **Sec. 10.** A new section is added to chapter 82.08 RCW  
35 to read as follows:

36       The tax levied by RCW 82.08.020 does not apply to sales of cosmetic  
37 medical services, as defined in section 3 of this act, performed on an

1 individual eighteen years of age or younger. A person claiming an  
2 exemption under this section shall complete and provide to the seller  
3 an affidavit in a form and manner prescribed by the department  
4 documenting that the person qualifies for exemption under this section.  
5 The seller shall retain a copy of the affidavit for the seller's files.

6 NEW SECTION. **Sec. 11.** A new section is added to chapter 82.12 RCW  
7 to read as follows:

8 The provisions of this chapter do not apply with respect to the use  
9 of cosmetic medical services, as defined in section 3 of this act,  
10 performed on an individual eighteen years of age or younger.

11 NEW SECTION. **Sec. 12.** This act takes effect October 1, 2005."

**2SSB 5451 - S AMD 376**  
By Senator Keiser

12 On page 1, line 2 of the title, after "services;" strike the  
13 remainder of the title and insert "amending RCW 82.04.060, 82.12.035,  
14 and 82.12.0251; reenacting and amending RCW 82.04.050, 82.12.020,  
15 82.04.190, and 82.12.010; adding a new section to chapter 82.32 RCW;  
16 adding a new section to chapter 82.04 RCW; adding a new section to  
17 chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; and  
18 providing an effective date."

--- END ---